Supreme Court, U.S.
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No.

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1996

VERONICE A. HOLT
Petitioner,

v.

THE HONORABLE CHARLES O. MITCHELL
Respondent,

Petition for Writ of Certiorari
To the Supreme Court of
The State of Florida

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Petitioner's father, Lloyd Holt, a World War II veteran was hospitalized, diagnosed as schizophrenic (an incurable mental illness) adjudicated insane and involuntarily committed by the Probate Court for Wayne County, Michigan to the care and custody of the Department of Veterans Affairs. In 1959, Wayne County Probate Court issued Letters of Guardianship appointing a fiduciary as guardian for Lloyd Holt who was mentally incompetent. After a nearly twenty year institutionalization, he remained in the care and treatment of the Veterans Affairs until his death on May 16, 1991. He remained under guardianship until the date of his death.

In probate proceedings, the State of Florida refused to give effect to the Michigan adjudications and admitted a will of Lloyd Holt to probate. Petitioner now seeks a writ of certiorari to present two important federal questions.

I. WHETHER THE FAILURE OF THE COURTS OF THE STATE OF FLORIDA TO GIVE THE MICHIGAN ADJUDICATIONS OF INSANITY AND GUARDIANSHIP THE SAME EFFECT THAT THEY WOULD HAVE IN MICHIGAN IS A VIOLATION OF THE FULL FAITH AND CREDIT CLAUSE OF THE UNTIED STATES CONSTITUTION.

II. WHETHER THE COURTS OF THE STATE OF FLORIDA HAVE DENIED TO THE PETITIONER AS GUARANTEED BY ARTICLE IV OF THE UNITED STATES CONSTITUTION THE SAME PRIVILEGES AND IMMUNITIES AS IT GRANTS TO CITIZENS OF FLORIDA IN PROCEEDINGS IN ITS COURTS

LIST OF PARTIES

The names of the parties to the proceedings in the Courts whose judgment is sought to be reviewed here appear in the caption of the case. The real party in interest in the proceedings below is Arvie J. Lee. Petitioner Veronice A. Holt brought an action against Arvie J. Lee to revoke a will made by Petitioner's father, Lloyd E. Holt, a mentally incompetent person. Petitioner's sisters, Patricia Gardner and Valerie Holt, joined in the proceedings in the Probate Court for Duval County, State of Florida. The interest of Patricia Gardner and Valerie Holt are co-extensive with the interest of Petitioner, Veronice A. Holt. None of the parties listed have either parent or subsidiary companies. The Department of Veterans Affairs (formerly the Veterans Administration) was an interested party in the proceedings in Wayne County Probate Court, but not in the Florida proceedings, the subject of this petition.

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Veronice A. Holt respectfully petitions this Court for a writ of certiorari to review the judgment of the Supreme Court of the State of Florida.

OPINIONS BELOW

The opinion of the Probate Court for Duval County, Florida, *see* Appendix ("App. A) is not reported. The Opinions of the First District Court of Appeal, affirming the Probate Court and denying rehearing (App. B and C) are reported at 681 So.2d 282 (Fla. 1st DCA, 1996).

The opinion of the Supreme Court of Florida denying jurisdiction (App. D) is reported at 684 So.2d 282 (Fla. 1996). The decisions of the Supreme Court of Florida denying the Petition for Mandamus and denying the request for rehearing on the Petition for Mandamus are unreported. (App. E. and F)

JURISDICTION

The Florida Supreme Court entered its judgment denying the Petition for Writ of Mandamus on December 30, 1996 and its order denying rehearing on February 19, 1997.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Article IV of the United States Constitution, provides in relevant part:

> Section 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.
>
> Section 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

28 U.S.C. § 1738 provides that, with respect to the authenticated acts, records and judicial proceedings of any State, that:

> Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possession as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

Florida Statutes specifically provide full faith and credit to judgments or orders of other states placing a person with the Department of Veterans Affairs.

394.4672 PROCEDURE FOR PLACEMENT OF VETERAN WITH FEDERAL AGENCY ---

(2) The judgment or order of placement by a court of competent jurisdiction of another state or of the District of Columbia, **placing a person with the United States Department of Veterans Affairs or other agency of the United States Government for care or treatment, shall have the same force and effect as to the person while in this state as in the jurisdiction in which is situated the court entering the judgment or making the order**; and the courts of the placing state or of the District of Columbia shall be deemed to have retained jurisdiction of the person so placed. Consent is hereby given to the application of the law of the placing state or district in respect to the authority of the chief officer of any facility of the United States Department of Veterans Affairs or of any institution operated in this state by any other agency of the United States to retain custody or to transfer, parole, or discharge the person.

744.103 GUARDIANS OF INCAPACITATED WORLD WAR VETERANS ---

The provisions of this law shall extend to incapacitated world war veterans, provided for in chapters 293 and 294 or any amendment or revisions of them.

38 U.S.C. 5502(d) provides in pertinent part:

> In the event of the death of a mentally incompetent or insane veteran, all gratuitous benefits under laws administered by the Secretary deposited before or after August 7, 1959, in the personal funds of patients trust fund on account of such veteran shall not be paid to the personal representative of such veteran, but shall be paid to the following persons living at the time of settlement, and in the order named: The surviving spouse, the children (without regard to age or marital status) in equal parts, and the dependent parents of such veteran, in equal parts.[1]

STATEMENT OF THE CASE

Petitioner respectfully suggests that this case presents questions worthy of certiorari. First this petition requests that this Court in its position as the arbiter of the Full Faith and Credit clause require the State of Florida to grant full faith and credit to the Michigan Court's adjudications of insanity and guardianship. Secondly, this petition requests this Court require the State of Florida to grant to residents of other states the same privileges and immunities in appearing before its courts that it grants to its own citizens.

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[1] The express purpose of this statute is to prevent the inheritance of gratuitous benefits for incompetent veterans by persons other than a surviving spouse, children or dependent parents. ***1959 U.S. Code Cong. and Adm. News 2048***

A. Historical Background

On February 7, 1944, Lloyd Holt was discharged from the United States army as unfit for service because of psychoneurosis, anxiety type, severe. Following his discharge from service, Lloyd E. Holt married Veronice Greene. Three children were born of their union; Petitioner, Veronice A. Holt, her twin sister, Valerie Ann Holt and Patricia Holt Gardner. Shortly after the birth of the twins in 1949, Lloyd Holt was involuntarily detained, diagnosed as schizophrenic, adjudicated insane, and involuntarily committed by the Probate Court for Wayne County, Michigan to a Veteran's Hospital in the State of Michigan where he remained until July 1, 1968 at which time he was released to outpatient care and treatment. The Department of Veterans Affairs transferred supervision of Lloyd Holt to Jacksonville, Florida where he remained in the care and treatment of the Department of Veterans Affairs until the date of his death on May 16, 1991.

Following entry of a decree of divorce for Veronice Greene, on July 20, 1959, Wayne County Probate Court granted the petition of the Serviceman's Bureau pursuant to the Uniform Veterans Guardianship Act for the appointment of a guardian for Lloyd Holt who was "mentally incompetent to have the care, custody and management of his estate; that he has been graded incompetent on examination by said Bureau", and issued Letters of Guardianship. His three daughters, Veronice, Valerie and Patricia were named his presumptive heirs.

At all times from November 26, 1959 until the date of his death, May 16, 1991, Lloyd Hdt, remained under court appointed guardianship in the Probate Court in Wayne County, Michigan. Further, at all times from 1949 until his death in 1991, Lloyd Holt was rated mentally incompetent by the Department of Veterans Affairs. Lloyd Holt was neither restored to sanity or mental competency; nor did he ever seek restoration to sanity. At the time of Lloyd Holt's death, nearly $300,000 in savings and investments from his benefits under Title 38 of the United States Code had accrued in the Michigan guardianship account.

B. The Michigan Estate

On June 17, 1991, a county public administrator appointed by the State of Michigan opened an estate in Wayne County Probate Court and received letters of Administration as the Temporary Personal Representative of the Estate of Lloyd Holt. Subsequently, Veronice A. Holt, Petitioner herein, appeared in the Wayne County Probate Proceedings and on November 5, 1991 was appointed Successor Temporary Representative in the probate proceedings in Wayne County.

Arvie Lee as the personal representative appointed by the State of Florida (discussed below) objected to the jurisdiction of the State of Michigan. The Probate Court in Michigan determined that Lloyd Holt was domiciled in the State of Florida and that its jurisdiction was ancillary. The Court of Appeals for the State of Michigan affirmed.

C. The Florida Probate Proceedings

On August 14, 1991, Arvie J. Lee, a nephew of Lloyd Holt, filed a Petition for Administration in the Circuit Court for Duval County, Probate Division, stating that he was the only known beneficiary of the estate and the only person having an interest in the estate. Arvie Lee was appointed Personal Administrator and a will of Lloyd Holt's dated January 17, 1989 and presented by Arvie Lee was admitted to probate (self proved) in Duval County.

In Duval County, Petitioner herein, Veronice A. Holt, filed a PETITION FOR REVOCATION OF PROBATE REMOVAL OF A PERSONAL REPRESENTATIVE AND DETERMINATION OF INVALIDITY OF WILL, requesting the Court, among other things:

(4) to declare the last Will and Testament of Lloyd E. Holt dated January 17, 1989 as propounded by Arvie J. Lee invalid pursuant to Sections 731.201 (19),[2] 732.501, 732.5165, Florida Statutes, specifically, that at the time of the making of the Will, Lloyd E. Holt was mentally incompetent and lacked testamentary capacity, and that the Will was procured through undue influence and fraud;

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[2] 731.201(19) "Incompetent means a minor or a person adjudicated incompetent."

(5) to determine that Lloyd E. Holt died intestate; [and]

(6) to declare Veronice A. Holt, Valerie Holt and Patricia Gardner, the daughters of Lloyd E. Holt, the lawful heirs of the estate of Lloyd E. Holt, each entitled to a one third share of the estate of Lloyd E. Holt.

Petitioner Veronice A. Holt moved for Summary Judgment, pleading the Michigan adjudications of insanity and the guardianship of Lloyd Holt as a mentally incompetent person as a bar to Lloyd Holt having testamentary capacity. The motion was denied without explanation, opinion, or findings of facts and conclusions of law.

The matter proceeded to trial before Charles O. Mitchell, Circuit Judge. The trial was held in chambers in secrecy over objection of Petitioner. At the trial, the parties stipulated to the authenticity of certified copies of records from the Michigan Probate Proceedings and the Jacksonville Clinic records for the period in which Lloyd Holt was under their supervision.[3] Although the authen

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[3] These records included:

a. Michigan Probate Records for Lloyd Holt
   i. The Physician's Certification dated January 18, 1949;
   ii. The Application for Admission to Hospital for Alleged Insane Person, as endorsed on March 30, 1949 by Judge Sexton;

(continued...)

ticity of the Michigan adjudication of insanity was conceded and two psychiatrist (including one called by Respondent Arvie J. Lee) testified that Lloyd Holt was in fact suffering from the mental illness, schizophrenia, at the time the will was made, throughout the trial and appeal Arvie J. Lee insisted that Lloyd Holt had merely had a nervous breakdown and was not insane. It was only in his response to the Petition for Writ of Mandamus that Arvie Lee finally admitted that, "in 1949, Lloyd E. Holt was involuntarily committed to a state psychiatric hospital in Detroit, Michigan, because of severe schizophrenia."

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[3](...continued)

iii. The Certificate of Eugene Quigly, M.D., certifying Lloyd Holt actually insane;

iv. The Certificate of Joseph L. Kubanek, M.D. certifying Lloyd Holt actually insane;

v. Temporary Detention Order Scheduling Hearing to Show Cause.

vi. The Director's Certification - Temporary Detention Order

vii. Petition for Appointment of Guardian of Alleged Mentally Incompetent Person Veterans Act

viii. Letters of Guardianship.

b. Lloyd Holt's C-File; and

C. The Jacksonville Clinic Outpatient Records

D. The Opinions Below

On September 7, 1995, Judge Charles O. Mitchell, entered a Final Order (App.A) without finding of facts.[4] He made no reference to the Michigan adjudication of insanity or the continuing guardianship. The sole statement of the Duval Probate Court decision with respect to Lloyd Holt's competency was his conclusory legal finding.

> "As to the issue of Decedent's testamentary capacity the Court finds that Respondent/Personal Representative has established by a preponderance of the evidence that, at the time he executed the Will on January 17, 1989, the Decedent possessed testamentary capacity."

Petitioner Veronice A. Holt, appealed to the First District Court of Appeal, asserting again the Michigan adjudication of incompetency as controlling on the question of Lloyd Holt's testamentary capacity. Petitioner also appealed the denial of summary judgment and the denial of her right to a public trial.

Respondent Arvie Lee, despite having stipulated to the authenticity of the Michigan adjudication in the Court below, argued that Lloyd Holt was neither adjudicated insane nor under guardianship. Petitioner responded by setting forth the laws of the State of Michigan

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[4] Judge Mitchell instructed the parties not to submit findings of fact and conclusions of law.

at the time of the involuntary commitment and the Michigan statutory and case law establishing the validity of the insanity adjudication and guardianship.

On September 12, 1996, the First District Court of Appeal issued a *per curiam* affirmance of the trial court's ruling. Petitioner timely filed a MOTION FOR RECONSIDERATION, REHEARING, AND/OR CLARIFICATION AND FOR REHEARING *EN BANC* stating that "the lower Court and now a panel of this Court, have issued opinions in which there is absolutely no reference, mention or acknowledgement of the fact [] that prior to making the will Lloyd Holt was adjudicated insane and not restored to sanity..."

On October 24, 1996, the First District Court of Appeal by Order of the Court denied the motion for rehearing (App.C). Petitioner Veronice A. Holt, timely filed a Petition for Review with the Supreme Court of Florida which dismissed the Petition for Review for lack of jurisdiction.[5]

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[5] Where the District Court of Appeal in Florida issues a *per curiam* denial, the Supreme Court of Florida has held that it is without jurisdiction to grant discretionary review. Thus the District Court of Appeal is the highest court that can issue a decision as required by 28 U.S.C. 1257. ***Nash v. Florida Industrial Commission.*** 389 U.S. 235 (1967)

On December 3, 1996, Petitioner Veronice A. Holt filed a Petition for Writ of Mandamus[6] with the Supreme Court of Florida asserting that (1) the final order finding Lloyd Holt competent to execute a will was a clear and certain violation[7] of Florida Statues § 394.4672 and § 744.103, and that (2) the failure to give effect to the prior Michigan adjudications of insanity and guardianship is a clear and certain violation of the Full Faith and Credit Clause of the United States Constitution. Finally, Petitioner Veronice A. Holt asserted that she was a resident of the District of Columbia and that Judge Mitchell's final order violated the Privileges and Immuni-

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[6] Although the Supreme Court of Florida is without jurisdiction to grant discretionary review of a *per curiam* affirmance, it does have discretionary original jurisdiction to issue extraordinary writs to review decisions of lower courts. Gerald Cogan and Robert Craig Waters, ***The Operation of the Florida Supreme Court,*** 18 Nova.L.Rev.1151 (1994) Reprinted by the Supreme Court of Florida. 55-58.

[7] Under Florida law, "mandamus is an appropriate remedy where the petitioner has a clear legal right to the performance of a particular duty and has no other legal method of obtaining relief. ***Pino v. District Court of Appeal for the Third District,*** 604 S.2d 1233 (Fla. 1992). "Florida law is well settled that mandamus may be sued only to enforce a right that is both clear and certain." ***Florida League of Cities v. Smith,*** 607 So.2d 397 (1992) See also ***Caldwell v. Estate of McDowell,*** 507 So.2d 607 (Fla. 1987); ***Holland v. Wainwright,*** 499 So.2d 21 (Fla. 1st DCA, 1986);***Heath v. Becktell,*** 327 So.2d 3 (Fla.1976).

ties Clause of Article IV Section 2 of the United States Constitution. Respondent Arvie Lee moved to dismiss the petition for failure to state a claim upon which relief can be granted.

By Orders dated December 30, 1996 and February 19, 1997, respectively (App. E and F), the Supreme Court of Florida denied the Petition for Writ of Mandamus without opinion.

REASONS FOR GRANTING THE PETITION

1. *Full Faith and Credit.* This Court is the final arbiter of questions arising under the Full Faith and Credit Clause. ***Morris v. Jones,*** 329 U.S. 545 (1946); ***Williams v. North Carolina,*** 317 U.S. 287 (1942) When a state court refuses to grant full faith and credit to the judgments of its sister state, an asserted federal right is denied and the sufficiency of the grounds of denial are for this court to decide." ***Titus v. Wallick,*** 306 U.S. 282, 291 (1939). Responsibility for resolution of federal constitutional issues rest with this court. ***Sutton v. Leib,*** 342 U.S. 402 (1952); ***Barber v. Barber,*** 323 U.S. 77 (1944).

From its earliest days, this Court has insisted upon the near absoluteness of the Full Faith and Credit Clause in requiring that that which has been adjudicated in one state is *res judicata* to the same extent in every other state. ***Magnolia Petroleum Co. v. Hunt,*** 320 U.S. 430 (1943). "Full faith and credit thus generally requires every state to give to a judgement at least the res judicata effect which the judgment be accorded in the state which

rendered it." ***Durfee v. Duke,*** 375 U.S. 106 (1963); ***North Carolina v. Williams,*** 325 U.S. 226 (1945); ***Order of Travelers v. Wolf,*** 331 U.S. 586 (1947). Even if a state improperly renders a judgment, the failure to appeal and provide a reviewing court an opportunity to correct the error, causes the judgement to pass "into verity, become final, and [] not [become] subject to collateral attack. ***Aldrich v. Aldrich,*** 378 U.S. 540 (1963).

Likewise, in enacting 28 U.S.C. § 1738 Congress intended the Full Faith and Credit Clause to mean "full" not "some" credit. ***Davis v. Davis,*** 305 U.S. 32 (1938).

Exceptions to the full faith and credit clause are few and far between. ***Williams, supra, 317 U.S. at page 294-295***[8] In this case, the record of the prior adjudications has been stipulated to by the parties and there is no applicable exception urged by any party. The obligation of the states to extend full faith and credit to their sister

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[8] The State of Florida cannot be motivated by considerations of policy. As Petitioner has consistently asserted in the proceedings below, there are no cases in Florida finding that a person adjudicated insane and under guardianship is competent to execute a will. Further, there is a logical explanation for the absence of such cases. In the State of Florida, "...where a person is adjudged to be insane, there exists a presumption that insanity continues..." ***Alexander v. Callahan's Estate,*** 132 So.2d 42 (Fla. 3d DCA 1961) relying upon ***Horace v. Culver,*** 111 So.2d 670 (Fla.1959).

states includes judicial proceedings. ***Sovereign v. Bolin,*** 305 U.S. 66 (1939). Indeed, in this case, the legislature of the State of Florida in enacting § 394.4672 has expressly recognized its obligation to give full faith and credit to the particular class of judgments at issue here. The Courts of the State of Florida have simply chosen to ignore the existence and validity of a judgment of another state, Michigan. On the motion for summary judgment where the only evidence before the Court related to Lloyd Holt's competency was the Michigan adjudications of insanity and guardianship, the Court denied the motion without opinion thus expressly failing to give effect to the Michigan adjudications. Likewise, when squarely faced with the full faith and credit issue in the Petition for Writ of Mandamus, the Florida Supreme Court denied the request without explanation. The Courts of the State of Florida have now rendered four opinions in this matter without ever acknowledging either the existence of the Michigan adjudications of insanity and guardianship or their obligation to give those judgments full faith and credit. This is an error that only this Court can correct.

2. *Privileges and Immunities.* The primary purpose of the Privileges and Immunities Clause of Article IV of the Constitution is to declare to the states that whatever rights a state grants to its citizens, its must grant the same rights to the citizens of other states who come into its jurisdiction. ***Toomer v. Witsell,*** 334 U.S. 385 (1948);[9]

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[9] Relying upon ***Paul v. Virginia,*** 8 Wall 168, 180-81 (continued...)

Building Trades & Construction Trades Counsel of Camden County v. Mayor and City Council of Camden, 465 U.S. 208 (1984).

The right of a citizen in one state to inherit property in another state is protected by the Privileges and Immunities Clause of Article IV. ***Magill v. Brown,*** 16 Fed. Cas. 408 (1883). Petitioner Veronice A. Holt is a citizen of the District of Columbia.[10] In the first instance, although the right to a public trial is guaranteed by the State of Florida, ***Barron v. Florida Freedom Newspapers,*** 531 So.2d 113, 116 (Fla. 1988)[11], the probate court judge insisted on holding this trial in the secrecy of his chambers. He then refused to apply the laws of his own state, Florida Statues § 394.4672 to Petitioner, a non-resident.

I. THE FAILURE OF THE COURTS OF THE STATE OF FLORIDA TO GIVE THE MICHIGAN ADJUDICATIONS OF INSANITY AND GUARD-

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[9](...continued)
(1868); ***Travis v. Yale & Towne Mfg. Co.,*** 252 U.S. 60, 78 (1920)

[10] Valerie Holt and Patricia Holt Gardner are residents of the District of Columbia and the State of Michigan, respectively.

[11] "[W]e hold that both civil and criminal court proceedings in Florida are public events and adhere to the well established common law right to access to court proceedings."

IANSHIP THE SAME EFFECT THAT THEY WOULD HAVE IN MICHIGAN IS A VIOLATION OF THE FULL FAITH AND CREDIT CLAUSE OF THE UNITED STATES CONSTITUTION

Where a state court has jurisdiction over the parties and the subject matter, the judgment of that state court controls in other states to the same extent as in the state that rendered the decision. Under Michigan law, an adjudication of mental incompetency and appointment of a guardian creates a conclusive presumption of incompetency. ***Acacia Mut. Life Ins. Co. v. Jago,*** 273 N.W. 599 (Mich. 1937).[12] More recently, in ***May v. Leneair,*** 297 N.W. 2D 599 (Mich. App. 1980) the Michigan Court relying upon ***Acacia Mutual Life*** held that under Michigan Law a person adjudicated mentally incompetent cannot enter a valid marriage.

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[12] "After a careful examination of the authorities *** we conclude that the correct rule is **that while an insane or incompetent person is under actual and subsisting guardianship of estate, he is conclusively presumed incompetent to make a vli d contract, notwithstanding it was made during a lucid interval.** He is a ward of the probate court under the laws of this state. The guardian, an officer of the court has the sole legal right to sell, assign, or mortgage the property belonging to his ward's estate, and any such transfer without the knowledge and consent of the guardian is void."

There is in the record no basis stated or asserted for a collateral attack on the Michigan adjudication of insanity or on the appointment of a guardian for a mentally incompetent person. Respondent now admits to the fact of the involuntary commitment. The existence of the guardianship at the time that the will was made is a part of the stipulated record. Indeed, Arvie Lee, a stranger to the adjudications of insanity and guardianship, has not made any showing that he had standing to collaterally attack either adjudication in the Michigan courts. To the extent that he lacked standing to collaterally attack the adjudication in the Michigan courts, he was equally without standing to make such a collateral attack in the State of Florida. ***Johnson v. Muelberger,*** 340 U.S. 581 (1951). Thus the only issue for the Court in Florida was to determine the effect to be given the Michigan adjudication and not to reweigh and redecide the issue of competency.

II. THE COURTS OF THE STATE OF FLORIDA HAVE DENIED TO THE PETITIONER AS GUARANTEED BY ARTICLE IV THE SAME PRIVILEGES AND IMMUNITIES AS IT GRANTS TO THE CITIZENS OF FLORIDA IN PROCEEDINGS IN ITS COURTS

This Court's jurisprudence concerning states discriminating against residents of other states "reveals a powerful, inchoate aversion to state parochialism or protectionism." ***Note: State Parochialism, and the Right to Travel and the Privileges and Immunities Clause of Article IV,*** 41 Stanford Law Rev. 1557 (1989). State

parochialism and protectionism are all exactly what are at work here.[13] Faced with a situation in which the law makes clear the right of out-of-state presumptive heirs to inherit their father's estate, the State of Florida has simply refused to acknowledge the existence of the prior adjudications by her sister state, Michigan, and thereafter refused to give those adjudications the full faith and credit to which they are entitled.

This Court has traditionally applied the Privileges and Immunities Clause to state legislation. The Clause, however if it is to have meaning must equally apply to state judicial proceedings. A state court cannot be empowered under the Constitution to treat residents of other states differently than the treatment it affords its own citizen. Indeed, the right to equal access to the courts of another state is probably one of the most common rights in our mobile society and economy which a citizen of one state is likely to seek in another state.

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[13] The Florida probate system which is a self-administering system that fosters close relationship between local lawyers and elected judges is perhaps tailor made for parochialism and protectionism. In 1995, Jeffrey Good, a reporter for the St. Petersberg Times won a Pulitzer Prize for his editorial investigation "Final Indignities" which detailed abuses, including lawyers looting estates with out-of-state beneficiaries, in the Florida probate courts.

CONCLUSION

Finally, it should be noted that the failure of the Courts of the State of Florida to give full faith and credit to the Michigan adjudications of insanity and guardianship and to grant the Petitioner the same privileges and immunities as its grants to the citizens of its State, clearly frustrates Congressional intent to limit the persons who may inherit these funds. The Courts of the State of Florida in failing to give full faith and credit to the Michigan adjudications of insanity and guardianship has thereby garnered for one of its domiciliaries a substantial economic benefit in contravention of the United States Constitution and the intent of Congress. For all the reasons stated herein, Petitioner prays this Court grant her petition for writ of certiorari.

April 26, 1997

Respectfully submitted,

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APPENDIX A

IN THE CIRCUIT COURT, FOURTH JUDICIAL DISTRICT, IN AND FOR DUVAL COUNTY, FLORIDA

PROBATE DIVISION

FILE NO.: 91-01234-CP
DIVISION: CV-D

IN RE: ESTATE OF LLOYD E. HOLT

Deceased,

VERONICE A. HOLT,

Petitioner,

v.

ARVIE J. LEE

Personal Representative/
Respondent,

FINAL JUDGMENT FOR RESPONDENT/PERSONAL REPRESENTATIVE

This came before the Court for trial without a jury on the Petition for Revocation of Probate, Removal of Personal Representative and Determination of Invalidity of Will

filed by Petitioner Veronice A. Holt and joined in by Patricia Gardner and Valerie Holt. The issues tried by the Court, as stipulated to by the parties in the Pretrial Stipulation filed in this cause on June 23, 1995, were: (1) whether the will dated January 17, 1989, and admitted to probate on August 14, 1991 (the "Will") was executed by Lloyd E. Holt (the "Decedent"): (2) whether the Decedent possessed testamentary capacity to execute the Will; (3) whether the Will was the product of undue influence exercised over Decedent by Respondent Arvie J. Lee; and (4) whether the funds held by First of America, the court-appointed guardian for Decedent during his lifetime, constitute "personal funds of patients" as that terms (*sic*) is used in 38 U.S.C. Section 5502(d) and thus not part of Decedent's probate estate subject to administration and devise by will. As to each of the foregoing issues, the Court received and considered the evidence adduced by the respective parties at the trial of this cause which was held from June 28, 1995, through July 6, 1995.

As to the first issue, the Court finds, based upon uncontradicted evidence adduced by Respondent/Personal Representative, that the Will dated January 17, 1989, and admitted to probate this case on August 14, 1991, was executed by Decedent as his Last Will and Testament and said Will was executed with the formalities required by Florida law.

As to the issue of decedent's testamentary capacity, the Court finds that Respondent/Personal Representative has established by a preponderance of the evidence that, at the time he executed the Will on January 17, 1989, the Decedent possessed testamentary capacity.

As to the third issue, the Court finds by a preponderance of the evidence that Decedent's Will dated January 17, 1989 was not the product of undue influence exercised over the Decedent by Respondent Arvie J. Lee or any other person.

Finally, as to the fourth issue, the Court finds that the assets held by First of America, under a guardianship established in Michigan for the benefit of Decedent during his lifetime, do not constitute "personal funds of patients" as that term is used in 38 U.S.C. Section 5502(d). The term "personal funds of patients" for purposes of 38 U.S.C. Section 3502(d), does not include amounts paid to a court-appointed fiduciary such as First of America. The Court finds that the funds held by First of America are funds that were properly paid to and held by First of America in its capacity as Decedent's court-appointed guardian. Thus under 38 U.S.C. Section 5502 and the relevant provisions of Title 38, Code of Federal Regulations, the funds held by first of American (*sic*) are not "personal funds of patients" but are assets subject to administration.

In light of the foregoing findings, Petitioner Veronice A. Holt, Patricia Gardner and Valerie Holt are not entitled to an account by Respondent of his administration of the Decedent's estate. Similarly, their request that Respondent be removed as Personal Representative should be denied since, as a result of the Court's ruling herein, they have no standing to contest Respondent's administration of the estate.

Therefore, its is now ORDERED AND ADJUDGED:

1. The Petition for Revocation of Probate, Removal of Personal Representative and Determination of Invalidity of

Will is denied and final judgment in favor of Respondent/Personal Representative on said Petition for Revocation of Probate, Removal of Personal Representative and Determination of Will is hereby entered.

2. The Will executed by decedent o January 17, 1989, and previously admitted to probate herein on August 14, 1991, was executed by decedent as his Last Will and Testament with the formalities required by Florida law.

3. At the time he executed the Will dated January 17, 1989, Decedent possessed testamentary capacity and such Will is not invalid on the basis of lack of testamentary capacity.

4. Decedent's Will dated January 17, 1989, was not the product of undue influence exercised over Decedent by Respondent Arvie J. Lee or any other person.

5. The funds held by First of America, the court-appointed guardian for Decedent during his lifetime, do not constitute "personal funds of patients" as that term is used in 38 U.S.C. Section 5502(d). Rather, they constitute funds paid by the Veterans Administration to a court-appointed fiduciary and are assets subject to administration by this Court and devise under Decedent's Will.

DONE AND ORDERED at Jacksonville, Duval County, Florida, this 7th day of September, 1995.

/s/ Charles O. Mitchell
Circuit Judge

Copies to:

Veronice A. Holt, Esq.
Valerie Holt
Patricia Gardner
John E. Lawlor, III, Esq.
Rebecca L. Berg, Esq.

mcm:49774

APPENDIX B

IN THE DISTRICT COURT OF APPEAL

FIRST DISTRICT, STATE OF FLORIDA

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEROF IF FILED

VERONICE A. HOLT
Appellant,

v. Case NO. 95-3505

ARVIE J. LEE
Appellee,

_____/

Opinion filed September 12, 1996

An appeal from the Circuit Court of Duval County, Judge Charles Mitchell,

Pro Se, Appellant.

John E. Lawlor, III, Fisher, Tousey, Leas & Ball, Jacksonville, for Appellee.

PER CURIAM

AFFIRMED

WOLF, VAN NORTWICK AND PADOVANO, JJ., CONCUR.

APPENDIX C

DISTRICT COURT OF APPEAL, FIRST DISTRICT

Tallahassee, Florida 32399
Telephone No. (904) 488-6151

October 24, 1996

CASE NO: 95-3505

L.T. CASE NO. 91-01234-CP

Veronice A. Holt v. Arvie J. Lee

BY ORDER OF THE COURT:

Appellant's motion for reconsideration, rehearing and/or clarification and for rehearing en banc, filed September 25, 1996 is DENIED.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

/s/
JON S. WHEELER , CLERK

BY: /s/ Karen Black
Deputy Clerk

Copies:

Veronice A. Holt John Lawlor

APPENDIX D

SUPREME COURT OF FLORIDA

WEDNESDAY, NOVEMBER 20, 1996

VERONICE A. HOLT **

Petitioner, ** CASE No. 89,327

vs. ** District Court of Appeal
1st District - No 95-3505

ARVIE J. LEE. **

Respondent **

It appearing to the Court that it is without jurisdiction, the Petition for Review is hereby dismissed. Jenkins v. State, 385 So.2d 1356 (Fla. 1980)

No motion for rehearing will be entertained by the Court.

A True Copy

Test:

Sid J. White
Clerk Supreme Court

H

cc: Hon Jon. S. Wheeler, Clerk
Hon. Henry W. Cook, Clerk
Hon. Charles Mitchell, Judge

Ms. Veronice A. Holt
Ms. Valerie Holt
Ms. Patricia Gardner
Mr. John E. Lawlor, III

APPENDIX E

SUPREME COURT OF FLORIDA

MONDAY, DECEMBER 30, 1996

VERONICE A. HOLT	**	
Petitioner,	**	CASE No. 89,449
vs.	**	District Court of Appeal
ARVIE J. LEE.	**	
Respondent	**	

Petitioner's Petition for Writ of Mandamus is hereby denied. SHAW, GRIMES, HARDING, WELLS AND ANSTEAD, JJ. concur.

A True Copy

H

cc: Ms. Veronice A. Holt
Mr. John E. Lawlor, III

Sid J. White

APPENDIX F

SUPREME COURT OF FLORIDA

WEDNESDAY, FEBRUARY 19, 1997

VERONICE A. HOLT **

Petitioner, ** CASE No. 89,449

vs. ** District Court of Appeal

ARVIE J. LEE. **

Respondent **

Petitioner's Motion for Rehearing filed in the above cause is hereby denied. SHAW, GRIMES, HARDING, WELLS AND ANSTEAD, JJ. concur.

A True Copy

TC

cc: Ms. Veronice A. Holt
Mr. John E. Lawlor, III

Sid J. White

Supreme Court, U.S.
FILED
MAY 29 1997
OFFICE OF THE CLERK

No. 96-1708

In The

Supreme Court of the United States

October Term, 1996

VERONICE A. HOLT,

Petitioner,

v.

THE HONORABLE CHARLES O. MITCHELL,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of The State Of Florida

RESPONDENT'S BRIEF IN OPPOSITION

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II. STATUTES CITED:

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III. UNITED STATES CONSTITUTION CITED:

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STATEMENT OF THE CASE

Respondent respectfully suggests that Petitioner's request for review by this Court is totally without merit. First, there was no judgment or order by a court of the State of Florida which failed to recognize or give proper weight to a judgment by a Michigan court. Second, the record of the proceedings in the courts of the State of Florida is totally devoid of any evidence that Petitioner was denied any privilege or immunity that citizens of Florida are granted.

A. Historical Background.

Lloyd Hold was born on January 8, 1924. He enlisted in the Army in January, 1943. He was discharged in 1944 because of psychoneurosis. Shortly after discharge, he was awarded a 10% disability pension by the Veterans Administration. Mr. Holt married Laverne Green on September 3, 1946. On August 12, 1947, Mr. and Mrs. Holt had their first child. On November 18, 1948, Mr. and Mrs. Holt gave birth to twin daughters, Petitioner Veronice Holt and her sister, Valerie Holt. During January or February, 1949, Mr. Holt suffered what is colloquially referred to as a nervous breakdown and was involuntarily committed. He was transferred to a Veterans Administration (VA) facility and remained hospitalized until 1967 because of schizophrenia. Commencing in May of 1949, Mr. Holt's service connected disability rating was increased to 100% and he was rated incompetent by the VA. From May of 1949 through May of 1959, Mr. Holt's VA benefits were paid directly to Mrs. Holt. Mrs. Holt divorced Mr. Holt in 1958. Upon divorce, a guardianship

was established under the Michigan Veterans Guardianship Act for receipt and administration of Mr. Holt's VA benefits and Social Security benefits. None of the Holt children had any contact with their father from 1948 to the time of his death on May 16, 1991, other than Petitioner Veronice Holt who exchanged some correspondence with him in 1967. In June of 1967, Mr. Holt was released from the VA hospital in Battle Creek, Michigan, and lived in a private home, pursuant to a VA sponsored foster care program. In July of 1968, Mr. Holt was released from further care and treatment by the VA facility in Battle Creek, Michigan. He moved to Jacksonville, Florida, where he resided with his sister. A bank in Detroit served as guardian of Mr. Holt's property, pursuant to the 1959 Veterans Guardianship Act guardianship, but Mr. Holt lived a somewhat normal life in Jacksonville, doing much of his own shopping, maintaining his own separate bank account, and getting about town through public and private transportation. Because of his VA pension and Social Security benefits, he had no financial need to work. The VA disability rating continued at 100% to the time of Mr. Holt's death and he received VA disability and Social Security benefits to the date of his death. In January of 1989, at Jacksonville, Florida, Mr. Holt executed a will whereby he left his estate to his nephew, Arvie Lee, who had cared for Mr. Holt and Mr. Holt's sister for a number of years prior to the execution of the will. At the time of Mr. Holt's death, the bank in Michigan serving as Mr. Holt's guardian held approximately $300,000 in savings and investments from his VA benefits and Social Security benefits.

B. The Michigan Proceedings.

Administration of Mr. Holt's estate was commenced in Michigan. An issue arose as to Mr. Holt's domicile at the time of death. The Michigan probate court determined that when Mr. Holt moved to Jacksonville, Florida, in 1968, he had changed his domicile from Michigan to Florida. The Michigan probate court determined that Mr. Holt possessed the mental capacity in 1968 to change his domicile. The court found in the alternative that, even if he did not possess the requisite mental capacity, his guardian certainly could agree and acquiesce to such move, and, under the facts of this case, the guardian's approval and acquiescence served as an alternative basis for the change of Mr. Holt's domicile to Florida. Petitioner Veronice Holt appealed this probate court ruling to the Michigan appellate court. The appellate court upheld the probate court. After determining that Mr. Holt was a domiciliary of Florida at the time of death, the Michigan court referred all matters relating to his estate to the Florida courts where Florida law concerning the issues of testamentary capacity and undue influence applied.

C. Florida Proceedings.

Arvie J. Lee, the nephew of Mr. Holt and the beneficiary under Mr. Holt's last will and testament, commenced administration of Mr. Holt's estate in August of 1991. On August 14, 1991, Mr. Holt's last will and testament, dated January 17, 1989, was admitted to probate. Thereafter, Petitioner Veronice Holt filed a petition to revoke probate of the will based upon lack of testamentary capacity, undue influence and fraud. A trial was held and the court

found that Mr. Lee had proved, by a preponderance of the evidence, that Mr. Holt possessed testamentary capacity. The court further found that there was no undue influence or fraud in the procurement of the will. The court further found that the assets held by the Michigan guardian were not funds held pursuant to 38 U.S.C. § 5502(d), another issue raised by Petitioner Veronice Holt in the proceedings below. At the trial level, Petitioner Veronice Holt never made the constitutional arguments now raised before this Court, nor did she ever cite to the trial court or premise any argument upon Florida Statutes § 394.4672 and § 744.103. However, the trial court had before it the entire Michigan guardianship file and all VA records relating to Lloyd Holt.

Petitioner Veronice Holt took an appeal to the First District Court of Appeal. In neither her opening brief nor her reply brief did she ever argue or cite Florida Statutes § 394.4672 or § 744.103, or the constitutional provisions upon which she bases her petition herein. Petitioner Holt's appeal of the trial court's determination on the issues of testamentary capacity, undue influence and fraud was based upon the sufficiency of evidence. The Michigan adjudication of incapacity in the Michigan Veterans Guardianship Act proceeding was before the appellate court as an item of relevant evidence on the issue of incapacity. Never did Petitioner Veronice Holt, either before the trial court or before the First District Court of Appeal, argue that the adjudication in the Michigan Veterans Guardianship Act case constituted a determination which somehow conclusively established Mr. Holt's incapacity for testamentary purposes. In fact, in both her opening brief and reply brief in the First District Court of

Appeal, Petitioner Veronice Holt never cited any Michigan cases dealing with this issue.

After the First District Court of Appeal affirmed the trial court, Petitioner Veronice Holt filed a petition for discretionary review with the Florida Supreme Court, which petition was dismissed. On December 3, 1996, Petitioner Veronice Holt filed a petition for writ of mandamus with the Supreme Court of Florida and, for the first time, asserted that (1) the final order finding Lloyd Holt competent to execute a will was a violation of Florida Statutes § 394.4672 and § 744.103, and (2) the failure to give effect to the prior adjudication of insanity was a violation of the full faith and credit clause, Article IV, Section 1, of the United States Constitution. Contrary to the allegations in the petition pending before this Court, Petitioner Veronice Holt did not assert in her petition for writ of mandamus with the Supreme Court of Florida that the trial court's order violated the privileges and immunities clause, Article IV, Section 2, of the United States Constitution. The Florida Supreme Court denied the petition for writ of mandamus.

Petitioner has filed the instant petition seeking review of the judgment of the Florida Supreme Court. She has filed an almost identical petition before this Court in Case Number 1709 seeking review of the judgment of the Florida First District Court of Appeal.

REASONS FOR DENYING THE PETITION

A. The Court has no jurisdiction over Petitioner's arguments.

This Court wisely refuses to review judgments rendered by the court of a state unless the federal question placed before this Court has been both raised and decided in the state court below. *Yee v. City of Escondido,* 503 U.S. 519, 523-33 (1992) (in reviewing judgments of state courts under 20 U.S.C. § 1257, the court will refuse to consider claims that were not raised or addressed below). *See also Beck v. Washington,* 369 U.S. 541, 549-53 (1962) (because petitioner failed to argue equal protection in the state court, question was not before this Court).

In this action, Petitioner seeks a review of an order entered by the Florida Supreme Court. The bases for review are the Florida Supreme Court's failure to afford her guarantees found under the full faith and credit clause, Article IV, Section 1, and the privileges and immunities clause, Article IV, Section 2. Petitioner never presented these constitutional bases for relief to the Florida Supreme Court. Rather, for purposes of this Court's review of the Florida Supreme Court's order, she has for the first time raised them in her petition for writ of certiorari. The federal questions, having not been raised in the relevant state court proceedings, are not now properly before this Court for review.

B. In any event, the Florida courts did not compromise Petitioner's constitutional rights under the full faith and credit clause or the privileges and immunities clause.

Neither the Michigan probate court nor the Michigan appellate court made any determination concerning the issues of Mr. Holt's testamentary capacity, undue influence, fraud or the applicability of 38 U.S.C. § 5502(d). Rather, the Michigan courts deferred these matters to the Florida courts based upon the Michigan courts' finding that Mr. Holt had changed his domicile in 1968 and died a domiciliary of Florida. As to the allegation that the Florida courts failed to give proper deference to the Michigan adjudication of incapacity when the Veterans Guardianship Act guardianship was established in 1959, such argument is patently frivolous. The evidence of the 1959 adjudication, as well as the 1948 involuntary commitment, was before both the Florida trial court and the Florida appellate court. The adjudication in 1959 and the 1948 involuntary commitment were evidentiary facts to be considered by the Florida courts in determining whether Mr. Holt possessed testamentary capacity.

Under Florida law, the law applicable to a determination of testamentary capacity in the case of a decedent domiciled in Florida who executed his will in Florida, a prior adjudication of incapacity does not render one incapable of making a will. Rather, a prior determination of incapacity merely shifts the burden of going forward with the evidence. *In re Estate of Ziy*, 223 So.2d 42 (Fla. 1969); *Chapman v. Campbell*, 119 So.2d 61 (Fla. 2d DCA 1960). That is, the burden of persuasion falls upon the proponent of the will, and, in the instant case, the trial court

found that the proponent of the will had established, by a preponderance of the evidence, the existence of testamentary capacity. Thus, the trial court correctly applied Florida law in finding testamentary capacity. Even if one were to find that Michigan law applied to the instant case, the same result would obtain. Under Michigan law, testamentary capacity is defined as the ability to make the effort of mind and memory necessary to remember what property a testator owns, to consider who may have claims to it, and what disposition is to be made under a testamentary instrument. *Schneider v. Vosburgh*, 106 N.W. 1129, 143 Mich. 476 (Mich. 1906). Less mental capacity is required to enable a man to make a valid will than to enter into a valid contract. *In re Weber's Estate*, 167 N.W. 937, 201 Mich. 477 (Mich. 1918). The fact that a testator has been adjudicated mentally incompetent and the care, control and custody of his property and person awarded to a guardian does not render him incompetent to make a will under Michigan law. *Rice v. Rice*, 15 N.W. 545, 50 Mich. 448 (Mich. 1883); *In re Cummins Estate*, 259 N.W. 894, 271 Mich. 215 (Mich. 1935); *In re Johnson's Estate*, 281 N.W. 597, 286 Mich. 213 (Mich. 1918); *In re Vallender's Estate*, 17 N.W. 2d 213, 310 Mich. 359 (Mich. 1945). Thus, the law of Michigan appears in all respects to be identical to the law of Florida on the test for testamentary capacity and the issue of whether a person who has been adjudicated incapacitated can possess the mental capacity necessary to make a will. Therefore, even if Petitioner's constitutional arguments had any merit, which they do not, the same result would obtain because the trial court's findings would have been the same had Michigan law been applied.

The most compelling reason for denying the petition for writ of certiorari in the instant case is that Petitioner's cause of action in which the offending order of the Florida Supreme Court was entered – for a writ of mandamus or prohibition – was frivolous. Petitioner unsuccessfully litigated her claims of lack of testamentary capacity, undue influence and fraud, through the courts of Florida. When she exhausted her appeals, she then petitioned the Florida Supreme Court for an order enjoining the trial judge from implementing and enforcing his final judgment which had been upheld through the appeals process. Clearly, mandamus or prohibition relief was not appropriate since such remedies only lie when a person has a clear legal right to the performance of a particular duty and no other legal method of obtaining relief. *Pino v. District Court of Appeal for the Third District*, 604 So.2d 1232 (Fla. 1992). In the instant case, the substantive merits of Petitioner's underlying claim were determined against her by a trial court and an appellate court. Therefore, she has no clear legal right to an order enjoining the enforcement of the judgment against her. Moreover, Petitioner had another legal method for obtaining the relief she sought on her underlying claim – trial of her case on the merits and the appellate review of the trial court's adverse judgment. She has exhausted these avenues of relief. Mandamus or prohibition relief is clearly unavailable.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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Supreme Court, U.S.
FILED
JUN 13 1997
OFFICE OF THE CLERK

(3)

No. 96-1708

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1996

VERONICE A. HOLT
Petitioner,

v.

THE HONORABLE CHARLES O. MITCHELL
Respondent,

Petition for Writ of Certiorari
To the Supreme Court of
The State of Florida

PETITIONER'S REPLY BRIEF

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Williams v. North Carolina, 317 U.S. 287 (1942). . 1

Yee v. City of Escondido, 503 U.S. 519 (1992). . . .2, 3

Petitioner respectfully suggests that review of the proceedings below is both appropriate and necessary to maintain this Court's role as the final arbiter of issues of full faith and credit. ***Morris v. Jones,*** 329 U.S. 545 (1946); ***Williams v. North Carolina,*** 317 U.S. 287 (1942). As discussed below petitioner expressly and consistently pleaded and raised the prior Michigan adjudications of insanity and guardianship as dispositive on the issue of Lloyd Holt's testamentary capacity in the proceedings in the Florida courts. The Florida courts simply refused to address the effect to be given to the prior Michigan adjudication. Further, in his opposition, Respondent clearly does not dispute either the near absoluteness of the Full Faith and Credit Clause nor its applicability to the prior Michigan adjudications of insanity and guardianship. What Respondent does seek to do is exactly that which the full faith and credit clause prohibits, that is to revisit and to relitigate the issues of Lloyd Holt's sanity and the necessity for guardianship.

I. PETITIONER'S FEDERAL CONSTITUTIONAL ISSUES WERE CLEARLY RAISED BELOW

Petitioner moved for summary judgment. In her motion, Petitioner expressly asserted the prior Michigan adjudications of insanity and guardianship as a bar to Lloyd Holt having testamentary capacity. The Florida Probate Court denied the motion without opinion, without findings of fact or conclusions of law or any determination of the effect to be given the prior

Michigan adjudications. At that point, Petitioner was required to proceed to trial on all issues including presenting other evidence regarding testamentary capacity and undue influence. In the appellate Court, Petitioner expressly appealed the denial of the motion for summary judgment as well as the trial court's final order.

Petitioner fully understands that it is not the role of this Court to redetermine factual issues determined by the Florida courts. For example, Petitioner understands and accepts the finality of the Florida courts determination of the issue of undue influence and does not raise that issue here.

Petitioner seeks from this Court solely an adjudication of the legal issues raised in her Petition, specifically, the constitutional obligations of the Florida courts to grant full faith and credit to a prior adjudication of a sister state and the requirement that the State of Florida grant to Petitioner the same privileges and immunities it grants to its own domiciliaries.

In the appeal before the Florida District Court of Appeal, Petitioner expressly argued that the prior Michigan adjudications of insanity and guardianship barred the Florida Court from finding that the decedent Lloyd Holt had testamentary capacity. When the First District Court of Appeal refused to address this issue, Petitioner sought a petition for a writ of mandamus or prohibition.

Respondent Lee improperly analogizes Petitioner Holt's posture to that of the Petitioner in ***Yee v. City of Escondido***, 503 U.S. 519 (1992). In ***Yee,*** the Petitioner had raised his constitutional issue (the Fifth Amendment Takings Clause) only in his petition to the California Supreme Court for discretionary review which was denied without opinion. In this case, the Florida Supreme Court expressly ruled, and Petitioner Holt agrees, that it was without jurisdiction to grant discretionary review of First District Court of Appeal's decision.. The Florida Supreme Court, however, did have the power to grant either a writ of prohibition or mandamus. Indeed Respondent Lee sought a ruling from the Florida Supreme Court that it lacked jurisdiction to grant the writ. The Florida Supreme Court ignored Lee's request and denied the writ on the merits.

Likewise, Petitioner Holt does not appear before this Court in the same posture as that of the petitioner in ***Beck v. Washington,*** 369 U.S. 541 (1962). In ***Beck,*** a fourteenth amendment equal protection case, the respondent asserted, and this Court found, that the petitioner had failed to comply with express provisions of Washington state law delineating the requirements for preserving and presenting appellate issues. Respondent Lee does not articulate any such failure on the part of Petitioner Holt.

Petitioner clearly raised the equal protection issue in the First District Court of Appeal on direct appeal as well as in the petition for mandamus or prohibition. The procedure in Florida is for the District Court of Appeal to

issue a decision which does not become final for fourteen days. During that period of time either party may seek rehearing, reconsideration or clarification. Holt, in her timely filed Petition for rehearing, reconsideration or clarification, expressly raised the equal protection issue in the First District Court of Appeal.

> "...the lower Court and now a panel of this Court, have issued opinions in which there is absolutely no reference, mention or acknowledgement of the facts: 1) that prior to making the will Lloyd Holt was adjudicated insane and not restored to sanity; *** Due process and equal protection of the laws require that Appellant receive the same reasoned legal analysis in the decision of her appeal that any other litigant in the Court of this State should expect. "

Respondent notably has chosen to attack only the petition for writ of certiorari to the Supreme Court of Florida. He has not attacked the petition for writ of certiorari to the First District Court of Appeal.

II. THE ISSUES RAISED IN THIS PETITION ARE PURELY LEGAL AND NOT FACTUAL

Finally Respondent Lee seeks to muddy the waters by arguing that what are clearly legal questions are factual issues. That is the purpose of the suggestion that Lloyd Holt had a twenty year nervous breakdown rather than being insane. All of these assertions are irrelevant to the determination of the issues presented herein. In the proceedings below Respondent stipulated to the records

of the Michigan adjudications of insanity and guardianship. It is just this type of retroactive inquiry that full faith and credit is designed to prohibit. ***Aldrich v. Aldrich,*** 378 U.S. 540 (1963).

III. UNDER MICHIGAN LAW, AN ADJUDICATION OF INSANITY COUPLED WITH GUARDIANSHIP CONCLUSIVELY RENDERS A PERSON INCOMPETENT TO TRANSFER PROPERTY

Perhaps, Respondent Lee's weakest argument is his suggestion that Michigan law permits an evidentiary determination of testamentary capacity where a person has been adjudicated insane and under guardianship. In 1937, the Michigan Supreme Court unambiguously adopted a preclusive rule on the effect of guardianship and incompetency. ***Acacia Mut. Life Ins. Co. v. Jago,*** 273 N.W. 599 (Mich. 1937)

> "After a careful examination of the authorities *** we conclude that the correct rule is **that while an insane or incompetent person is under actual and subsisting guardianship of estate, he is conclusively presumed incompetent to make a valid contract, notwithstanding it was made during a lucid interval.** He is a ward of the probate court under the laws of this state. The guardian, an officer of the court has the sole legal right to sell, assign, or mortgage the property belonging to his

ward's estate, and any such transfer without the knowledge and consent of the guardian is void." [1]

See also ***May v. Leneair,*** 297 N.W. 2d 599 (Mich. App. 1980) Although cited in the Petition for certiorari, Respondent entirely ignores ***Acacia.*** Respondent relies upon six Michigan cases that are neither legally controlling precedent nor factually apposite. Four of Respondent's cases were decided prior to ***Acacia.***[2] The two post ***Acacia*** cases cited by Respondent do not involve the effect to be given to transfers of property by persons who are **both** adjudicated insane and under legal guardianship.[3]

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[1] In this case, it is undisputed that the guardian had absolutely no knowledge of the making of the will and did not give consent.

[2] ***Rice v. Rice,*** 15 N.W. 545, 50 Mich. 448 (Mich. 1883); ***Schneider v. Vosburgh,*** 106 N.W. 1129, 143 Mich. 476 (Mich. 1906); ***In re Weber's Estate,*** 167 N.W. 937, 201 Mich 477 (Mich. 1918); and ***In re Cummins Estate,*** 259 N.W. 894, 271 Mich. 215 (Mich. 1935).

[3] In ***In re Vallender's Estate,*** 17 N.W.2d 213, 310 Mich. 359 (Mich. 1945) the decedent had consented to guardianship of his property. He had not been declared insane and there was no allegation that he was insane. ***In re Johnson's Estate,*** 281 N.W. 597, 286 Mich. 213 (Mich. 1938) is a case involving a petition by a live party to discharge guardianship.

CONCLUSION

The writ should be granted and the case remanded. The State of Florida must be required to expressly acknowledge and adjudicate its obligation to give full faith and credit to the prior Michigan adjudications of insanity and guardianship. The Florida courts must then determine what effect the State of Michigan would give the prior adjudications of insanity and guardianship. Florida must then give the adjudications the same effect.

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Respectfully submitted,

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